

GOVERNMENT PROPERTY - LIMITED RISK OF LOSS

[FP – NR&D, FP – R&D, CIS, FPC – 09/04] [FAR 52.245-2 – 06/03, Alt I – 04/84]

(This deletes and is substituted for the Article of this Subcontract entitled "Government Property.")

(a) Government-Owned/JPL-Furnished Property (hereafter "GFP").

- (1) JPL shall deliver to the Subcontractor, for use in connection with and under the terms of this Subcontract, the property described in the Schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property.
- (2) The delivery or performance dates for this Subcontract are based upon the expectation that GFP suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the Subcontract's delivery or performance dates.
- (3) If GFP is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify JPL, detailing the facts, and, as directed by JPL and at JPL expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, JPL shall make an equitable adjustment as provided in paragraph (h) of this Article.
- (4) If GFP is not delivered to the Subcontractor by the required time, JPL shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this Article.

(b) Changes in GFP.

- (1) JPL may, by written notice, (i) decrease the GFP provided or to be provided under this Subcontract or (ii) substitute other GFP for the property to be provided by JPL, or to be acquired by the Subcontractor for JPL, under this Subcontract. The Subcontractor shall promptly take such action as JPL may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Subcontractor's written request, JPL shall make an equitable adjustment to the Subcontract in accordance with paragraph (h) of this Article, if JPL has agreed in the Schedule to make the property available for performing this Subcontract and there is any:
 - (A) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (B) Withdrawal of authority to use this property, if provided under any other Subcontract or lease.

(c) Title.

- (1) The Government shall retain title to all GFP.
- (2) All GFP and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government Property"), are subject to the provisions of this Article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling Article) acquired by the Subcontractor for JPL under this Subcontract shall pass to and vest in the Government when its use in performing this Subcontract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this Subcontract contains a provision directing the Subcontractor to purchase material for which JPL will reimburse the Subcontractor as a direct item of cost under this Subcontract:
 - (A) Title to material purchased from a supplier shall pass to and vest in the Government upon the supplier's delivery of such material; and
 - (B) Title to all other material shall pass to and vest in the Government upon:
 - (i) Issuance of the material for use in Subcontract performance;

- (ii) Commencement of processing of the material or its use in Subcontract performance; or
 - (iii) Reimbursement of the cost of the material by JPL, whichever occurs first.
- (d) Use of Government Property. The Government property shall be used only for performing this Subcontract, unless otherwise provided in this Subcontract or approved by JPL.
- (e) Property Administration.
 - (1) The Subcontractor shall be responsible and accountable for all Government property provided under this Subcontract and shall comply with FAR Subpart 45.5, and any corresponding implementing or supplementing provisions in the NFS, as modified by the JPL document "Management of Government Property in the Possession of Subcontractors" (JPL 0968, a copy of which is attached to and made a part of this Subcontract), as in effect on the date of this Subcontract.
 - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR, and any corresponding implementing or supplementing provisions in the NFS.
 - (3) If damage occurs to GFP, the risk of which has been assumed by JPL under this Subcontract, JPL shall replace the items or the Subcontractor shall make such repairs as JPL directs. However, if the Subcontractor cannot affect such repairs within the time required, the Subcontractor shall dispose of the property as directed by JPL. When any property for which JPL is responsible is replaced or repaired, JPL shall make an equitable adjustment in accordance with paragraph (h) of this Article.
 - (4) The Subcontractor represents that the Subcontract price does not include any amount for repairs or replacement for which JPL is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.
- (f) Access. JPL or the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited Risk of Loss.
 - (1) The term "Subcontractor's managerial personnel," as used in this paragraph (g), means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (A) All or substantially all of the Subcontractor's business;
 - (B) All or substantially all of the Subcontractor's operation at any one plant or separate location at which the Subcontract is being performed; or
 - (C) A separate and complete major industrial operation connected with performing this Subcontract.
 - (2) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this Subcontract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.
 - (3) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this Subcontract (including expenses incidental to such loss, destruction, or damage):
 - (A) That results from a risk expressly required to be insured under this Subcontract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (B) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (C) For which the Subcontractor is otherwise responsible under the express terms of this Subcontract;
 - (D) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
 - (E) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or

system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this Article.

(4)

(A) If the Subcontractor fails to act as provided in subdivision (g)(3)(E) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.

(B) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage:

- (i) Did not result from the Subcontractor's failure to maintain an approved program or system; or
- (ii) Occurred while an approved program or system was maintained by the Subcontractor.

(5) If the Subcontractor transfers Government property to the possession and control of a First-tier Subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the First-tier Subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the First-tier Subcontractor's possession or control, except to the extent that the First-tier Subcontractor, with the advance approval of the Contracting Officer through JPL, relieves the First-tier Subcontractor from such liability. In the absence of such approval, the First-tier Subcontractor shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of this Subcontract.

(6) Upon loss or destruction of, or damage to, Government property provided under this Subcontract, the Subcontractor shall so notify the Contracting Officer through JPL and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer through JPL a statement of:

- (A) The lost, destroyed, or damaged Government property;
- (B) The time and origin of the loss, destruction, or damage;
- (C) All known interests in commingled property of which the Government property is a part; and
- (D) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer through JPL directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the Contracting Officer through JPL, sell such property for the account of the Institute. Such sales may be made in order to minimize the loss to the Government and the Institute, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the Subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this Article. However, the Institute may directly reimburse the loss and salvage organization for any of their charges. JPL shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Subcontractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Institute any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that JPL may have expressly required the Subcontractor to carry such insurance under another provision of this Subcontract.

(9) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace

the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the Institute, as directed by JPL.

- (10) The Subcontractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer through JPL, the Subcontractor shall, at the Institute's expense, furnish to the Institute all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Institute) in obtaining recovery. In addition, where a First-tier Subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of the Institute the liability of the First-tier Subcontractor for such loss, destruction, or damage.
- (h) Equitable Adjustment. When this Article specifies an equitable adjustment, it shall be made to any affected Subcontract provision in accordance with the procedures of the "Changes" Article. When appropriate, JPL may initiate an equitable adjustment in favor of JPL. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. JPL shall not be liable to suit for breach of Subcontract for:
- (1) Any delay in delivery of GFP;
 - (2) Delivery of GFP in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of GFP; or
 - (4) Failure to repair or replace Government property for which JPL is responsible.
- (i) Final Accounting and Disposition of Government Property. Upon completing this Subcontract, or at such earlier dates as may be fixed by JPL, the Subcontractor shall submit, in a form acceptable to JPL, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Subcontract or delivered under this Subcontract. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid to the Institute as JPL directs.
- (j) Abandonment and Restoration of Subcontractor's Premises. Unless otherwise provided herein, the Government through JPL:
- (1) May abandon any Government property in place, at which time all obligations of the Government and the Institute regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Subcontract completion). However, if the GFP (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this Article may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this Article shall be in writing.
- (l) Overseas Subcontracts. If this Subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-furnished," respectively.